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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,980	03/23/2004	Ryan McFarland	RM/04	4500

7590 03/08/2006
Gene R. Woodle
3516 Woodle Drive
Rapid City, SD 57702

EXAMINER

VANAMAN, FRANK BENNETT

ART UNIT PAPER NUMBER

3618

DATE MAILED: 03/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/807,980

Applicant(s)

MCFARLAND, RYAN

Examiner

Frank Vanaman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Specification

1. The abstract of the disclosure is objected to because the phrase "Embodiments of a shopping cart extender are disclosed" is redundant and should be deleted. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

2. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 1, it is not clear what aspects of a cart associated with the term "conventional" are or are not being recited; in claims 2 and 3, it is not clear what is meant by "forward" or "rearward" of vertical insofar as the term "vertical" does not presume a forward or rearward direction; in claims 4-6, line 2 (each claim) it is not clear what is meant by the phrase "where upward is with the shopping cart extender engaged" insofar as "upward" is not understood to depend on further conditions; in claims 7-12, it is not entirely clear whether or not the recitation is a further limitation of the extender (note the preamble to claim 1: "a shopping cart extender" and the limitations recited therein), the cart, or another element.

As regards claims currently rejected under 35 USC §112, second paragraph, please note that rejections under 35 USC §102 and 103 should not be based upon considerable speculation as to the meaning of the terms employed and assumptions as to the scope of the claims when the claims are not definite. See *In re Steele* 305 F.2d 859, 862, 134 USPQ 292, 295 (CCPA 1962). When no reasonably definite meaning can be ascribed to certain terms in a claim, the subject matter does not become anticipated or obvious, but rather the claim becomes indefinite. See *In re Wilson* 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). As such the currently pending claims may be subject to prior art rejections not set forth herein upon the clarification of the claim language.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Werner (US 6,641,147) in view of Baumgart (US 2,845,729). Werner teaches an extender for use with a conventional shopping cart including a bar (100) in the shape of an open rectangle, affixed to the front of the cart (at 96) at a top thereof, the bar being perpendicular to a longitudinal cart axis, the bar including an upwardly protruding stopportion (102, 98) positioned thereabove, and arranged to be movable to a position where the bar forms a level surface to prevent the load from shifting forward or backwards, wherein the bar may be engaged from a position forwardly or rearwardly thereof, as best understood. The reference to Werner fails to teach the bar portion as being pivotable between load-accommodating and nested-cart positions, and further having an engaging portion to facilitate the load-accommodating position. Baumgart teaches the use of a pivotable connection to pivot an element (17) to be above a cart front (figure 1), and to collapse to a nesting-cart configuration (figure 3) including an engagement portion (bottom of 17, top of 14) which hold the pivotable element in an extended position (figure 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the load accommodating bar taught by Werner as a pivotally mounted element, as taught by Baumgart, rather than a slidably mounted element, for the purpose of allowing the load accommodating bar to be automatically stowed when the cart is nested with another, thus reducing time and effort required to store the carts compactly.

5. Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Werner in view of Baumgart and Duer (US 5,429,377). The references to Werner and Baumgart are discussed in detail above and fail to teach the provision of upwardly

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protruding ears at the ends of the handle. Duer teaches a handle arrangement (figures 49, 50, 51) wherein a handle (145, 149) is provided with upwardly extending ears (151) at each end thereof. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the handle of the cart taught by Werner as modified by Baumgart with a handle as taught by Duer, having upwardly extending ears at ends thereof, for the purpose of providing a presenting a clean surface and preventing damage to the structure beneath it.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Huffman et al. (US 3,052,484), Ganci et al. (US 3,614,133), Von Stein et al. (US 3,645,554), Joseph (US 4,123,077 and 4,248,441), Kakavas (US 4,679,818), Rich (US 4,754,885), Adamson (US 5,385,358), and Ondrasik (US 6,193,246) teach cart structures of pertinence.

7. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A response to this action should be mailed to:

Mail Stop _____
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450,

Or faxed to:

PTO Central Fax: 571-273-8300

F. VANAMAN
Primary Examiner
Art Unit 3618



3/1/08